

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL ANTHONY BOYER
81-327 Avenida Alamitos
Indio, CA 92201

Registered Nurse License No. 361449

Respondent

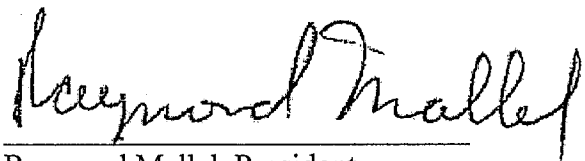
Case No. 2012- 231

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **January 11, 2013.**

IT IS SO ORDERED **December 12, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012-231

12 **MICHAEL ANTHONY BOYER**
13 **81-327 Avenida Alamitos**
14 **Indio, CA 92201**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Registered Nurse License No. 361449**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
22 Board of Registered Nursing. She brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Sherry L. Ledakis, Deputy Attorney General.

25 2. Respondent Michael Anthony Boyer (Respondent) is represented in this proceeding
26 by attorney Daniel P. Thompson, Esq., whose address is: 2366 Gold Meadow Way, Suite 200
27 Gold River, CA 95670.

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3. On or about August 31, 1983, the Board of Registered Nursing issued Registered Nurse License No. 361449 to Michael Anthony Boyer (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-231 and will expire on December 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 2012-231 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 11, 2011. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 2012-231 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2012-231. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 2012-231.

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10. Respondent agrees that his Registered Nurse License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 361449 issued to Respondent Michael Anthony Boyer (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension. Upon successful completion of probation, Respondent's license shall be fully restored.

1 3. **Report in Person.** Respondent, during the period of probation, shall appear in
2 person at interviews/meetings as directed by the Board or its designated representatives.

3 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
4 practice as a registered nurse outside of California shall not apply toward a reduction of this
5 probation time period. Respondent's probation is tolled, if and when he resides outside of
6 California. Respondent must provide written notice to the Board within 15 days of any change of
7 residency or practice outside the state, and within 30 days prior to re-establishing residency or
8 returning to practice in this state.

9 Respondent shall provide a list of all states and territories where he has ever been licensed
10 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
11 information regarding the status of each license and any changes in such license status during the
12 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
13 license during the term of probation.

14 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
15 or cause to be submitted such written reports/declarations and verification of actions under
16 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
17 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
18 Respondent shall immediately execute all release of information forms as may be required by the
19 Board or its representatives.

20 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
21 state and territory in which he has a registered nurse license.

22 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
23 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
24 6 consecutive months or as determined by the Board.

25 For purposes of compliance with the section, "engage in the practice of registered nursing"
26 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
27 non-direct patient care position that requires licensure as a registered nurse.

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1 The Board may require that advanced practice nurses engage in advanced practice nursing
2 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

3 If Respondent has not complied with this condition during the probationary term, and
4 Respondent has presented sufficient documentation of his good faith efforts to comply with this
5 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
6 extension of Respondent's probation period up to one year without further hearing in order to
7 comply with this condition. During the one year extension, all original conditions of probation
8 shall apply.

9 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
10 prior approval from the Board before commencing or continuing any employment, paid or
11 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
12 performance evaluations and other employment related reports as a registered nurse upon request
13 of the Board.

14 Respondent shall provide a copy of this Decision to his employer and immediate
15 supervisors prior to commencement of any nursing or other health care related employment.

16 In addition to the above, Respondent shall notify the Board in writing within seventy-two
17 (72) hours after he obtains any nursing or other health care related employment. Respondent
18 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
19 regardless of cause, from any nursing, or other health care related employment with a full
20 explanation of the circumstances surrounding the termination or separation.

21 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
22 Respondent's level of supervision and/or collaboration before commencing or continuing any
23 employment as a registered nurse, or education and training that includes patient care.

24 Respondent shall practice only under the direct supervision of a registered nurse in good
25 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
26 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
27 approved.

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Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

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1 Respondent shall work only on a regularly assigned, identified and predetermined
2 worksite(s) and shall not work in a float capacity.

3 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
4 request documentation to determine whether there should be restrictions on the hours of work.

5 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and
6 successfully complete a course(s) relevant to the practice of registered nursing no later than six
7 months prior to the end of his probationary term.

8 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
9 Respondent shall submit to the Board the original transcripts or certificates of completion for the
10 above required course(s). The Board shall return the original documents to Respondent after
11 photocopying them for its records.

12 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
13 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
14 amount of \$955.00. Respondent shall be permitted to pay these costs in a payment plan approved
15 by the Board, with payments to be completed no later than three months prior to the end of the
16 probation term.

17 If Respondent has not complied with this condition during the probationary term, and
18 Respondent has presented sufficient documentation of his good faith efforts to comply with this
19 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
20 extension of Respondent's probation period up to one year without further hearing in order to
21 comply with this condition. During the one year extension, all original conditions of probation
22 will apply.

23 12. **Violation of Probation.** If Respondent violates the conditions of his probation, the
24 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
25 and impose the stayed discipline (revocation/suspension) of Respondent's license.

26 If during the period of probation, an accusation or petition to revoke probation has been
27 filed against Respondent's license or the Attorney General's Office has been requested to prepare
28 an accusation or petition to revoke probation against Respondent's license, the probationary

1 period shall automatically be extended and shall not expire until the accusation or petition has
2 been acted upon by the Board.

3 13. **License Surrender.** During Respondent's term of probation, if he ceases practicing
4 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
5 Respondent may surrender his license to the Board. The Board reserves the right to evaluate
6 Respondent's request and to exercise its discretion whether to grant the request, or to take any
7 other action deemed appropriate and reasonable under the circumstances, without further hearing.
8 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
9 subject to the conditions of probation.

10 Surrender of Respondent's license shall be considered a disciplinary action and shall
11 become a part of Respondent's license history with the Board. A registered nurse whose license
12 has been surrendered may petition the Board for reinstatement no sooner than the following
13 minimum periods from the effective date of the disciplinary decision:

14 (1) Two years for reinstatement of a license that was surrendered for any reason other
15 than a mental or physical illness; or

16 (2) One year for a license surrendered for a mental or physical illness.

17 14. **Physical Examination.** Within 45 days of the effective date of this Decision,
18 Respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician
19 assistant, who is approved by the Board before the assessment is performed, submit an
20 assessment of the Respondent's physical condition and capability to perform the duties of a
21 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
22 medically determined, a recommended treatment program will be instituted and followed by the
23 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
24 to the Board on forms provided by the Board.

25 If Respondent is determined to be unable to practice safely as a registered nurse, the
26 licensed physician, nurse practitioner, or physician assistant making this determination shall
27 immediately notify the Board and Respondent by telephone, and the Board shall request that the
28 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall

1 immediately cease practice and shall not resume practice until notified by the Board. During this
2 period of suspension, Respondent shall not engage in any practice for which a license issued by
3 the Board is required until the Board has notified Respondent that a medical determination
4 permits Respondent to resume practice. This period of suspension will not apply to the reduction
5 of this probationary time period.

6 If Respondent fails to have the above assessment submitted to the Board within the 45-day
7 requirement, Respondent shall immediately cease practice and shall not resume practice until
8 notified by the Board. This period of suspension will not apply to the reduction of this
9 probationary time period. The Board may waive or postpone this suspension only if significant,
10 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
11 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
12 Only one such waiver or extension may be permitted.

13 **15. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

14 Respondent, at his expense, shall successfully complete during the probationary period or shall
15 have successfully completed prior to commencement of probation a Board-approved
16 treatment/rehabilitation program of at least six months duration. As required, reports shall be
17 submitted by the program on forms provided by the Board. If Respondent has not completed a
18 Board-approved treatment/rehabilitation program prior to commencement of probation,
19 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
20 If a program is not successfully completed within the first nine months of probation, the Board
21 shall consider Respondent in violation of probation.

22 Based on Board recommendation, each week Respondent shall be required to attend at least
23 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
24 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
25 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
26 added. Respondent shall submit dated and signed documentation confirming such attendance to
27 the Board during the entire period of probation. Respondent shall continue with the recovery plan

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recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

17. **Submit to Tests and Samples.** Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and Respondent shall be considered in violation of probation.

1 In addition, Respondent, at any time during the period of probation, shall fully cooperate
2 with the Board or any of its representatives, and shall, when requested, submit to such tests and
3 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
4 hypnotics, dangerous drugs, or other controlled substances.

5 If Respondent has a positive drug screen for any substance not legally authorized and not
6 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
7 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
8 practice pending the final decision on the petition to revoke probation or the accusation. This
9 period of suspension will not apply to the reduction of this probationary time period.

10 If Respondent fails to participate in a random, biological fluid testing or drug screening
11 program within the specified time frame, Respondent shall immediately cease practice and shall
12 not resume practice until notified by the Board. After taking into account documented evidence
13 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
14 suspend Respondent from practice pending the final decision on the petition to revoke probation
15 or the accusation. This period of suspension will not apply to the reduction of this probationary
16 time period.

17 18. **Mental Health Examination.** Respondent shall, within 45 days of the effective date
18 of this Decision, have a mental health examination including psychological testing as appropriate
19 to determine his capability to perform the duties of a registered nurse. The examination will be
20 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
21 the Board. The examining mental health practitioner will submit a written report of that
22 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
23 Recommendations for treatment, therapy or counseling made as a result of the mental health
24 examination will be instituted and followed by Respondent.

25 If Respondent is determined to be unable to practice safely as a registered nurse, the
26 licensed mental health care practitioner making this determination shall immediately notify the
27 Board and Respondent by telephone, and the Board shall request that the Attorney General's
28 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease

1 practice and may not resume practice until notified by the Board. During this period of
2 suspension, Respondent shall not engage in any practice for which a license issued by the Board
3 is required, until the Board has notified Respondent that a mental health determination permits
4 Respondent to resume practice. This period of suspension will not apply to the reduction of this
5 probationary time period.

6 If Respondent fails to have the above assessment submitted to the Board within the 45-day
7 requirement, Respondent shall immediately cease practice and shall not resume practice until
8 notified by the Board. This period of suspension will not apply to the reduction of this
9 probationary time period. The Board may waive or postpone this suspension only if significant,
10 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
11 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
12 Only one such waiver or extension may be permitted.

13 19. **Therapy or Counseling Program.** Respondent, at his expense, shall participate in
14 an on-going counseling program until such time as the Board releases him from this requirement
15 and only upon the recommendation of the counselor. Written progress reports from the counselor
16 will be required at various intervals.

17 ACCEPTANCE

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
19 discussed it with my attorney, Daniel P. Thompson, Esq. I understand the stipulation and the
20 effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and
21 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
22 Decision and Order of the Board of Registered Nursing.

23
24 DATED: April 5, 2012

Michael Anthony Boyer
MICHAEL ANTHONY BOYER
Respondent

1 I have read and fully discussed with Respondent Michael Anthony Boyer the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4 DATED: 4-6-12

D. Thompson
DANIEL P. THOMPSON, Esq.
Attorney for Respondent

7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
10 Affairs.

11 Dated: 4/17/2012

Respectfully submitted,

13 KAMALA D. HARRIS
Attorney General of California
14 LINDA K. SCHNEIDER
Supervising Deputy Attorney General

15 Sherry L. Ledakis
16 SHERRY L. LEDAKIS
17 Deputy Attorney General
18 Attorneys for Complainant

20 SD2011801036
21 70543328.doc

Exhibit A

Accusation No. 2012-231

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012 - 231**

13 **MICHAEL ANTHONY BOYER**
14 **81-327 Avenida Alamos**
Indio, CA 92201

A C C U S A T I O N

15 **Registered Nurse License No. 361449**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about August 31, 1983, the Board of Registered Nursing issued Registered
24 Nurse License Number 361449 to Michael Anthony Boyer (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on December 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
3 to the qualifications, functions, and duties of the licensee in question.

4 As used in this section, "license" includes "certificate," "permit," "authority,"
5 and "registration."

6 9. Section 2761 of the Code states:

7 The board may take disciplinary action against a certified or licensed nurse or
8 deny an application for a certificate or license for any of the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
10 following:

11

12 (f) Conviction of a felony or of any offense substantially related to the
13 qualifications, functions, and duties of a registered nurse, in which event the record of
14 the conviction shall be conclusive evidence thereof.

15

16 10. Section 2762 of the Code states:

17 In addition to other acts constituting unprofessional conduct within the meaning
18 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
19 licensed under this chapter to do any of the following:

20

21 (b) Use any controlled substance as defined in Division 10 (commencing with
22 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
23 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
24 dangerous or injurious to himself or herself, any other person, or the public or to the
25 extent that such use impairs his or her ability to conduct with safety to the public the
26 practice authorized by his or her license.

27 (c) Be convicted of a criminal offense involving the prescription, consumption,
28 or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a

manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(September 14, 2005 Criminal Conviction for DUI With a Collision on April 27, 2005)**

3 14. Respondent has subjected his license to disciplinary action under sections 490 and
4 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
5 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
6 follows:

7 a. On or about September 14, 2005, in a criminal proceeding entitled *People of the*
8 *State of California v. Michael Anthony Boyer*, in Riverside County Superior Court, case number
9 INM158046, Respondent was convicted on his plea of guilty of violating Vehicle Code section
10 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. An additional
11 count of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol
12 concentration (BAC) of 0.08% or more, was dismissed pursuant to a plea agreement.

13 b. As a result of the conviction, on or about September 14, 2005, Respondent was
14 sentenced to three years summary probation, and ordered to complete "Leaders in Community
15 Alternative, Inc." in lieu of 10 days in jail. Respondent was further ordered to attend and
16 complete a three-month First Offender DUI Program, pay \$1,726.40 in fees, fines, and restitution,
17 and comply with the terms of standard DUI probation.

18 c. The facts that led to the conviction are that on or about the afternoon of April
19 27, 2005, a California Highway Patrol (CHP) officer was dispatched to a non-injury collision at a
20 La Quinta intersection. Upon arrival, the officer interviewed a driver who stated he was stopped
21 at a red light when Respondent rear-ended his vehicle. The officer contacted Respondent and
22 noted that Respondent had the odor of an alcoholic beverage on his breath and person, his eyes
23 were red and watery, and he was sweating heavily. Respondent was administered a series of field
24 sobriety tests which he was not able to complete as explained and demonstrated. Respondent
25 admitted to drinking a half pint of tequila that day. Respondent was arrested for driving under the
26 influence. At booking, Respondent provided three breath samples which were analyzed with a
27 BAC of .34, .31, and .33, respectively.

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